

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 28, 2008**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, October 28, 2008, commencing at 7:00 a.m.

Present: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 State Legislation Briefing (CM)

City Manager King briefly introduced the subject matter of the State legislative briefing.

Stephen Qualls, representative of the League of California Cities, provided a presentation regarding the State legislative session. Mr. Qualls reviewed various League priority bills affecting local government including employee relations bills (AB 2754, AB 2918, AB 3063, SB 1115, and SB 1296), environmental quality bills (AB 31, AB 2270, AB 2347, AB 2939, SB 1016, SB 1357, and SB 1548), public utilities and energy bills (AB 2466 and SB 980), land use and housing bills (AB 749, AB 842, AB 2000, AB 2280, AB 2494, SB 375, and AB 992), public safety bills (AB 38, AB 759, AB 844, AB 1724, AB 1751, AB 1859, AB 2151, AB 2262, and SB 1519), revenue and taxation bills (AB 697, AB 1221, AB 1451, SB 301, and SB 1064), transportation and public works bills (AB 642, AB 983, and AB 2295), and miscellaneous bills (AB 2537, AB 2427, AB 2610, and SB 1124).

In response to Council Member Johnson, Mr. Qualls and Mr. King stated that the League's concern with AB 2754 was that it would presumptively make the cities liable through workers compensation for staph infections and the like for public safety employees.

In response to Council Member Hitchcock, Mr. Qualls stated SB 375 does not affect the general plan process at all as long as cities meet the greenhouse gas reduction requirements. Mr. Qualls stated cities will need to do an analysis on how well they are meeting the requirements and some funds were provided to do these studies.

In response to Mayor Mounce, Mr. King stated the biggest difference between SB 375 and AB 32 is that allocation numbers are now given for targeted figures in a particular area. He stated the Regional Housing Needs Assessment process was extended from five years to eight years and SB 375 is a regional target rather than an individual target. Mr. Qualls stated the implementation process of the bill is still being vetted.

In response to Council Member Hitchcock, Mr. Qualls stated SB 375 allows the cities to have greater control with their respective general plan and housing processes than was proposed without the bill.

In response to Mayor Mounce, Mr. Qualls stated the two-year time period allowed the League to continue working with the SB 375 author to help retain cities as much local control as possible.

In response to Myrna Wetzel, Mr. King stated there will still be a stand-alone cap and trade program, which will set forth requirements for projects. He stated he is not sure of what specific affect the new law will have in that area.

In response to City Manager King, Mr. Qualls stated that, although he is not sure of what specific efforts are being made at the federal level in relation to scrap metal ordinances, he knows the National League of Cities is working on housing issues at the federal level.

In response to Council Member Katzakian, Mr. King and City Attorney Schwabauer stated the new law for design build may be applicable to a proposed treat and drink facility. Mr. King stated charter cities already had the ability to do design build projects before the law went into effect and now general law cities have the same option. Mr. Schwabauer stated that, based on his conversation with Assembly Member Wolk's office, the legislation does mention design build for water treatment plants in one place, but neglects to mention it another and therefore there may be some argument as to whether or not it could apply.

In response to Council Member Hitchcock, Mr. Schwabauer stated he believed that the legislation was written as it was intentionally to leave some flexibility for cities.

In response to Mayor Pro Tempore Hansen, Mr. Schwabauer stated unions are opposed to the design build proposition in general.

In response to Council Member Johnson, Mr. Schwabauer stated the City is going to say that the design build legislation does apply to a water treatment project.

In response to Mayor Mounce and Mayor Pro Tempore Hansen, Mr. Schwabauer stated AB 2427 is very broad and leaves room for the smaller massage establishments to continue to be regulated by local ordinances, but preempts local regulation of any that are licensed through the State already, for which the requirements are minimal.

In response to City Manager King and City Attorney Schwabauer, Mr. Qualls stated that, because AB 2427, along with other bills, was vetoed because the Governor did not have time to review the legislation, he believed the legislation would be coming back next session.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:51 a.m.

ATTEST:

Randi Johl
City Clerk



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CITY OF LODI COUNCIL COMMUNICATION

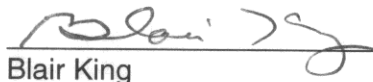
AGENDA TITLE: State Legislation Briefing
MEETING DATE: October 28, 2008 (Shirtsleeve Session)
PREPARED BY: City Manager

RECOMMENDED ACTION: None.

BACKGROUND INFORMATION: League of California Cities area representative Stephen Qualls will provide a report on the 2008 State legislative session. He will highlight legislation of interest to Lodi. Attached is a listing of bills signed and vetoed of concern to the League of Cities.

Of interest to the City is the landmark legislation SB 375 (Steinberg) that addresses local land use control and regional planning issues.

FISCAL IMPACT: None related to the presentation.


Blair King
City Manager

BK

APPROVED: 
Blair King, City Manager



2008 Legislation – Governor’s Signature and Vetoes October 1, 2008

With Governor Schwarzenegger finally signing the budget on September 22nd, he then had 9 days to determine which of the 1187 bills sent to his desk would be signed or vetoed. The Governor completed taking actions on bills on September 30, and a list of his actions on bills of concern to the League of California Cities is listed below.

Citing the budget impasse, the Governor vetoed a higher percentage of bills this year than any other Governor has in the past. The Governor explained the delay in passing the 2008-09 state budget had forced him to prioritize the bills sent to his desk, and more than 150 pieces of legislation received a veto message stating that the bill was not among the highest priorities for California. Legislation receiving this message are indicated with an asterisk (*) below. It is expected that many of these bills will be reintroduced next year.

In total, the Governor signed 772 bills, and vetoed 415 bills. Further information on bills can be found on the Leagues website at www.cacities.org/billsearch.

League Priority Bills – listed by issue area

Employee Relations

AB 2754 (Bass)

Request: Veto

Result: Signed – Chapter 684, Statutes of 2008

Provides a rebuttable presumption under the workers’ compensation system for public safety employees who claim a methicillin-resistant Staphylococcus aureus (MRSA/staph)-related injury.

AB 2918 (Lieber)

Request: Veto

Result: Vetoed

Prohibits the use of a consumer credit report for employment purposes, with some exceptions.

AB 3063 (Committee on Labor & Employment)

Request: Veto

Result: Vetoed

Prohibits employers from requesting that an applicant disclose information or use for employment related decisions information concerning a criminal conviction that was expunged or judicially ordered sealed.

SB 1115 (Midgen)

Request: Veto

Result: Vetoed

Weakens the apportionment statute (defining the portion of injury related to the workplace, as opposed to pre-existing conditions) implemented by SB 899 (Poochigian; 2004), the landmark legislation that implemented much needed workers' compensation reforms, and allow the courts to overrule apportionment even when based on findings of actual previous disability.

SB 1296 (Corbett)

Request: Veto

Result: Signed – *Chapter 712, Statutes of 2008*

Provides superior courts exclusive jurisdiction over actions involving interest arbitration where the action involves representatives of firefighters.

Environmental Quality

AB 31 (De Leon)

Request: Sign

Result: Signed – *Chapter 623, Statutes of 2008*

Requires the California Department of Parks and Recreation (DPR) to establish a local assistance program to distribute grants to the most park needy communities across the state, with funding derived from the \$400 million that was designated for this purpose in Proposition 84.

AB 2270 (Laird)

Request: Sign

Result: Vetoed

Allows cities and water agencies to restrict usage of specific types of water softeners only if the State Water Resources Control Board or the regional water quality control board made a finding that control of residential salinity will contribute to the achievement of water quality objectives in the region.

AB 2347 (Ruskin)

Request: Sign

Result: Signed – *Chapter 572, Statutes of 2008*

Requires a manufacturer that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006, to establish and maintain a collection and recycling program for out-of-service mercury-added thermostats.

AB 2939 (Hancock)

Request: Sign

Result: Vetoed

Allows those local governments who wish to enact stronger green building standards to do so without the existing restrictions of climatic, geological or topographical conditions.

SB 1016 (Wiggins)

Request: Sign

Result: Signed – *Chapter 343, Statutes of 2008.*

Re-calculates the way solid waste diversion efforts are imposed upon local governments, and also revises the timelines that local jurisdictions must adhere to when reporting to the Integrated Waste Management Board.

SB 1357 (Padilla)

Request: Sign

Result: Signed – *Chapter 697, Statutes of 2008*

Authorizes the Department of Conservation to expend up to \$20 million from July 1, 2009, to January 1, 2012, for recycling and litter reduction grants and programs, and requires a grant recipient to submit a report to the department and would require the department to publish an evaluation of grants made pursuant to these provisions, including a summary of those reports.

SB 1548 (Florez)

Request: Sign

Result: Signed – *Chapter 622, Statutes of 2008*

Creates a local city selection committee (Existing law requires five members to be appointed by cities within the territory of the district, based on region and population) within the San Joaquin Valley Unified Air Pollution Control District Board of Directors.

Public Utilities: Energy

AB 2466 (Laird)

Request: Sign

Result: Signed – *Chapter 540, Statutes of 2008*

Establishes the Renewable Energy Self-Generation Program to allow a city, county, city and county, special district, school district, or other public agency to benefit from the excess electricity produced at the local entity's facility. The bill authorizes a local governmental entity to receive a credit on the bill of a benefiting account, equal to the amount of the electricity it exported to the electrical grid and from an eligible renewable generating facility.

SB 980 (Padilla)

Request: Veto

Result: Vetoed

Requires the California Energy Commission to evaluate the adequacy of the electric distribution system of local publicly owned electric utilities as a part of their 2009 Integrated Policy Report.

Land Use/Housing

AB 749 (Wolk)

Request: Sign

Result: Signed – *Chapter 477, Statutes of 2008*

Requires, as of March 1, 2009, residential care facilities for the elderly to have an emergency plan that includes specified provisions and is available, upon request, to both residents onsite as well as to local emergency responders.

AB 842 (Jones)

Request: Veto

Result: Vetoed

Requires the Department of Housing and Community Development to rank applicants for the award of capital improvement project grants based upon a reduction of vehicle miles traveled as a result of a qualifying infill project, as specified.

AB 2000 (Mendoza)

Request: Sign

Result: Vetoed

Provides additional flexibility to a local government in the regional housing need assessment (RHNA) process, by allowing a local government that exceeds its regional housing need during a planning period to count the excess units toward meeting its share in the next planning period.

AB 2280 (Saldana)

Request: Sign

Result: Signed – *Chapter 454, Statutes of 2008*

Makes several technical fixes to the Density Bonus Law and addresses an absurd interpretation of the law relating to the bonus awarded to affordable senior projects within larger scale developments.

AB 2494 (Caballero)

Request: Sign

Result: Signed – *Chapter 641, Statutes of 2008*

Establishes the Housing-Related Parks Program to govern the allocation of \$200 million under the administration of HCD. Requires the department to use funds allocated from the account, to provide grants for the creation, development, or rehabilitation of park and recreation facilities, to cities and counties that meet certain criteria, including adoption of a HCD approved housing element, and issue housing starts, for newly constructed units that are affordable to very low or low-income households.

SB 375 (Steinberg)

Request: Sign

Result: Signed – *Chapter 728, Statutes of 2008*

Aligns transportation, housing, and greenhouse gas (GHG) emissions regional planning processes, provides incentives through CEQA streamlining for infill projects, and provides additional certainty for local governments that engage in planning processes that will result in reductions in GHG emissions.

SB 992 (Wiggins)

Request: Sign

Result: Vetoed

Requires the Department of Alcohol and Drug Programs (ADP) to administer the licensure and regulation of adult recovery maintenance facilities, and requires the department to adopt emergency regulations, implement the fee process for initial licensure, the provisions for the extension of licensure, follow up compliance visits, and civil penalties.

Public Safety

AB 38 (Nava)

Request: Sign

Result: Signed – *Chapter 372, Statutes of 2008*

Consolidates the roles and responsibilities of the Governor's Office of Emergency Services and Office of Homeland Security into a new state agency, the California Emergency Management Agency, for a more efficient state-wide disaster preparedness and response system.

AB 759 (Karnette)

Request: Sign

Result: Vetoed

Requires local fire enforcing agencies to inspect elderly care facilities with six or fewer residents, applying standards established by the State Fire Marshal and Department of Social Services, to ensure the fire safety of the facility. This bill also permits the fire enforcing agencies to collect reasonable fees from the facility owner to cover the expense of inspections.

AB 844 (Berryhill)

Request: Sign

Result: Signed – *Chapter 731, Statutes of 2008*

Creates additional requirements on scrap metal recyclers and traders to prevent scrap metal thefts by requiring identification of those presenting scrap metal to the recycler and a three-day delay in payment to those individuals. This bill also allows local government to enact stronger ordinances to prevent scrap metal thefts if local public safety needs warrant greater regulation.

AB 1724 (Jones)

Request: Sign

Result: Vetoed*

Permits local government agencies to enact and enforce vehicle impoundment ordinances for nuisance vehicles repeatedly involved with illegal dumping activity.

AB 1751 (Fuentes)

Request: Sign

Result: Vetoed*

Permits local government agencies to enact and enforce vehicle impoundment ordinances for nuisance vehicles repeatedly involved with prostitution-related activity.

AB 1859 (Adams)

Request: Sign

Result: Signed – *Chapter 659, Statutes of 2008*

Creates an additional \$3,000 penalty for stolen scrap metal sales or purchase charges that involve fire hydrant and fire department connection parts.

AB 2151 (Jones)

Request: Sign

Result: Vetoed

Authorizes the Alcoholic Beverage Control Department to deny the transfer or issuance of a liquor retail license if it would contribute to blight, based on the findings of the local government agency. AB 2151 also authorizes a local redevelopment agency to deny the issuance or transfer of a liquor retail license within the redevelopment agency.

AB 2262 (Torrico)

Request: Sign

Result: Vetoed

Expands the "Safe-Surrender" program to allow children seven-days old or younger to be surrendered to a safe-surrender site as designated, which may include fire departments upon approval by the local fire agency or governing body.

SB 1519 (Yee)**Request: Sign****Result: Signed** – *Chapter 721, Statutes of 2008*

Authorizes a local government agency to request the disconnection of telephone service provided to unlicensed taxi cab operations and permits telephone service providers to disconnect or deny the issuance of telephone service if local enforcement efforts have not prevented or stopped the unlawful taxi cab operations.

*Revenue and Taxation***AB 697 (Hancock)****Request: Sign****Result: Vetoed***

Prohibits a city and/or county, including a chartered city or county, on or after October 1, 2008, from entering into any form of agreement that results, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of Bradley-Burns local sales and use tax proceeds to any person for any purpose when both of the following apply: (1) the agreement results in a reduction in the amount of Bradley-Burns tax proceeds received by another local agency from a retailer within the territorial jurisdiction of that other local agency; and (2) the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

AB 1221 (Ma)**Request: Sign****Result: Vetoed***

Expands the toolbox of available options for financing infrastructure associated with transit village development by ensuring that these facilities may be financed through the use of existing Infrastructure Financing District Law. This bill also expands the size of a transit village development district from 1/4 to 1/2 mile, and requires that at least 20 percent of all tax increments under the plan be used for affordable housing development.

AB 1451 (Leno)**Request: Sign****Result: Signed** – *Chapter 538, Statutes of 2008*

Extends the sunset date with respect to the existing property tax exclusion from reassessment provided to the construction or addition of active solar energy systems from the 2008-09 fiscal year, to the 2015-16 fiscal year. In addition, this bill allows this exclusion to be transferred to the initial occupant of a new building, if the builder installed the solar energy system during the original construction.

SB 301 (Romero)**Request: Sign****Result: Signed** – *Chapter 375, Statutes of 2008*

Extends existing statute that provides additional financial assistance through the Vehicle License Fees (VLF) allocated to cities for both future incorporations and annexations by cities of inhabited territory.

SB 1064 (Hollingsworth)**Request: Sign****Result: Signed** – *Chapter 386, Statutes of 2008*

Provides income and property tax relief to individuals, businesses, and local governments that suffered losses as a result of five separate disasters during 2007 and 2008.

Transportation/Public Works

AB 642 (Wolk)

Request: Sign

Result: Signed – Chapter 314, Statutes of 2008

Allows cities to use design-build contracting for building construction projects as well as wastewater facilities, solid waste management facilities, or water recycling facilities for more efficient, cost-effective public works projects.

AB 983 (Ma)

Request: Veto

Result: Vetoed

Requires cities to provide full, complete, and accurate plans, including cost estimates on all public works projects, which would reduce incentives for contractors to report errors in plans during bidding because additional expenses could be recouped through change-order claims against the public agency.

AB 2295 (Arambula)

Request: Sign

Result: Vetoed

Includes local street and road rehabilitation projects on the list of eligible types of projects that may receive State Transportation Improvement Funds.

Miscellaneous

AB 2537 (Furutani)

Request: Sign

Result: Signed – Chapter 678, Statutes of 2008

Helps to ensure that city public works projects can be completed with volunteers by continuing provisions that establish volunteers do not have to be paid prevailing wages for their work, as it is being done on voluntary basis.

AB 2427 (Eng)

Request: Veto

Result: Vetoed*

Prohibits a city or county from incidentally regulating a local healing arts business that is licensed or certified by the State Department of Consumer Affairs.

AB 2610 (Davis)

Request: Veto

Result: Vetoed*

Unnecessarily mandates local governments that want to address unattended collection boxes in their community and must follow a new permit program outlined in the bill.

SB 1124 (Local Government Committee)

Request: Sign

Result: Signed – Chapter 709, Statutes of 2008

Enacts the Local Government Omnibus Act of 2008 and proposes various technical, but important, changes to the law affecting local agencies' powers and duties.

Problems the League Identified in the Version in Print as of March, 2008

1. Mandatory Growth Allocations. It required Metropolitan Planning Organizations (MPOs) to do mandatory and heavily prescribed growth allocations within the regional transportation plan (RTP), which came to be known as “concentric circle” planning.

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2. Sweeping Resource Definitions. It contained resource definitions that included new ambiguous terms such as “keystone” and “umbrella” species.

€

3. Mandatory Limits on Transportation Investments. The location of resource lands dictated transportation investments.

€

4. Confusion Between State and Federal Laws. Confusion existed about the relationship between the new “Sustainable Communities Strategy,” a so-called “Supplement,” and the existing federal RTP requirements.

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5. Top-Down Targets. It called for a top-down process for setting GHG targets that was unacceptable.

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6. No Role for Elected Officials. It contained no provisions for incorporating the input of elected local officials into the Sustainable Communities Strategy who actually make land use decisions.

€

7. Meaningless CEQA Relief. The CEQA provisions were unlikely to result in meaningful relief of any kind.

€

8. Conflict With RHNA. The new goal of encouraging infill through transportation investments and the RTP (4 year cycle) directly conflicted with existing RHNA goals and was on a different cycle than RHNA (5-year cycle).

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9. Mandates Without Incentives. The bill was mandate oriented, not incentive based.

€

10. Lack of Funding. The League was concerned about a continued lack of funding tools for infill infrastructure.

€

What is in Final Version of SB 375

After literally thousands of staff hours¹ studying and negotiating this bill, the exchange of literally dozens (if not hundreds) of proposed amendments, and careful negotiations with the author’s direct involvement along with other stakeholders (builders, affordable housing groups, counties, planners, etc.), the bill in its amended form is significantly different:

1 Mandatory Growth Allocations Eliminated. The mandatory growth allocations have been removed and the requirement in earlier drafts that a region “identify resource lands” has been changed to “gather and consider the best practically available scientific information about resource lands.”

2. Proposed New Definitions Abandoned. The ambiguous environmental land definitions have been clarified to be consistent with existing standards in current law that are well understood.

3. Local Involvement in Setting GHG Targets. The bill now contains a fair process for setting regional targets that includes a statewide advisory committee with League representation. Minimum workshops requirements in each region are imposed on CARB.

4. Local Land Use Jurisdiction Clearly Protected. Cities retain complete planning and regulatory authority over local land use decisions. There is no requirement to amend the local general plan to comply with the regional strategy, nor is it a precondition for CEQA relief.

5. Special Outreach to Local Elected Officials By MPO. Each MPO must adopt an outreach process that includes specific workshops for local elected officials in each county of the MPO.

6. RHNA Extension and Consistency. The bill achieves a three year extension of the RHNA process (from 5 – 8 years), making it consistent with the RTP process of two four-year cycles. This achieves a major League goal.

7. Meaningful CEQA Relief. The bill contains numerous, meaningful CEQA relief provisions. Among other things, this includes relief from GHG analysis under CEQA for residential and mixed use projects consistent with the density, designation and building intensity in the regional plan without any local plan changes necessary.

8. Accounting for GHG Emissions. The bill contains a feasible way to account for GHG emissions from cars and light trucks

9. Incentive Based System. The bill now offers meaningful CEQA relief incentives to reward development consistent with the regional Sustainable Communities Strategy (SCS) rather than local mandates. Local general plans must be considered as well in the development of the SCS.

10 Ends Confusion Between RTP and Supplement. The bill explicitly removes any connection between the “Supplement” (now called the “Alternative Planning Strategy” which is required when a region’s RTP cannot meet the regional targets) and the RTP; i.e., the land use pattern in the Alternative Planning Strategy will not affect or be part of the RTP.

11. Future Funding for Infill Infrastructure. Senator Steinberg will make written commitments to work with League to secure additional funding for infill infrastructure planning and development while he is Pro Tem.



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www.cacities.org

TO: California City Officials

FROM: Jim Madaffer, President and Council President Pro Tem, San Diego
Chris McKenzie, Executive Director

SUBJECT: SB 375 (Steinberg) and the League's Formal Support Position

DATE: September 15, 2008

EXECUTIVE SUMMARY: Last year the League board opposed SB 375 (Steinberg) unless it became a two-year bill and pledged to work with the author to reach a fair compromise, if possible, to address our core local land use control concerns. We are pleased to report that SB 375, as finally amended, provides an incentive-based statutory framework for reducing the 35-40% of greenhouse gas (GHG) emissions that come from cars and light trucks while at the same time protecting local land use authority and providing important RHNA and CEQA reforms. Soon you will receive an in-depth analysis of the bill from the League, but this memo explains the reasons for the board's August 6 unanimous decision (with one abstention) to change its position and discusses the amendments the League secured, including:

- ***All Local Land Use Authority Protected.*** Cities retain complete local control over all land use decisions and their general plans.
- ***RHNA Reforms.*** The bill includes a new 8-year RHNA schedule (in place of the 5-year schedule) for cities and counties that update their housing elements.
- ***Consultation on Targets.*** CARB issues regional greenhouse gas (GHG) targets only after consultation with regions and local governments. [Not required under AB 32].
- ***Discretion for Transportation Funding Retained.*** The metropolitan planning organizations (MPOs) retain discretion over the Regional Transportation Plan (RTP). The MPO may allocate transportation dollars even when there is no feasible way for the Sustainable Communities Strategy (SCS) within the RTP to achieve the regional GHG target. In such circumstances, the region must develop an Alternative Planning Strategy (APS) that is separate from the RTP, but the APS is not used to allocate transportation funding.
- ***New CEQA Reforms Within A Local Control Framework.*** The SCS or APS, whichever is certified as achieving the GHG goal, qualifies eligible projects for substantial CEQA streamlining for projects that are consistent with the regional plan. Such projects, however, must still seek local approvals, which include conformity with the local general plan.

2006 GHG Legislation and 2007 Supreme Court Decision

In 2006 the legislature and governor approved AB 32 (Nunez), the *Global Warming Solutions Act*, delegating broad authority to the California Air Resources Board (CARB) to issue regulations to achieve major reductions in GHG emissions in all sectors of the economy, including cars and light trucks which contribute approximately 35 - 40% of all GHG emissions. A few months later the U.S. Supreme Court held that a similar general statutory scheme (the Clean Air Act) should be construed to apply to GHG reduction even though the law did not explicitly authorize a particular type of regulation.¹

This case confirmed for League attorneys that without additional legislation like SB 375, the broad grant of authority in AB 32 would likely allow CARB to regulate in areas traditionally reserved to local and regional agencies, including transportation and land use planning, approvals and investments. (In fact, CARB was preparing to do so). We subsequently learned that lawyers with the California Building Industry Association (CBIA) had independently reached the same conclusion and that its leaders shared our belief that local land use control could be better protected by negotiating changes to SB 375 than trying to stop it.

League Opposes SB 375 in 2007 -- Commits to “Roll Up Its Sleeves”

At its July 2007 meeting, the Board devoted three hours to discussing SB 375 and subsequently sent Senator Steinberg a letter that shared the board’s “enthusiastic support of the purposes of SB 375,” but nevertheless opposed the bill and requested that he hold it over to the next legislative session. The letter went on to acknowledge that the bill presented “a historic opportunity” to reduce greenhouse gas emissions and that the League was “ready, willing and able to roll up its sleeves and get to work” on addressing our concerns. The Senator ultimately agreed to delay action when the League, builders and others expressed concern. The League had identified a number of outstanding issues:

- Mandatory Growth Allocations. It required Metropolitan Planning Organizations (MPOs) to do mandatory and heavily prescribed growth allocations within the regional transportation plan (RTP), which came to be known as “concentric circle” planning. **[Removed in final bill]**
- Sweeping Resource Definitions. It contained resource definitions that included new ambiguous terms such as “keystone” and “umbrella” species. **[Removed in final bill]**
- Mandatory Limits on Transportation Investments. The location of resource lands dictated transportation investments. **[Removed in final bill]**
- Confusion Between State and Federal Laws. Confusion existed about the relationship between the new “Sustainable Communities Strategy,” a so-called “Supplement,” and the existing federal RTP requirements. **[Resolved in final bill]**
- No Role for Elected Officials. It contained no provisions for incorporating the input of elected local officials into the Sustainable Communities Strategy who actually make land use decisions. **[Addressed in final bill]**

¹ *Massachusetts v. EPA*, 127 S.Ct. 1438 (2007).

- Top-Down Targets. It called for a top-down process for setting GHG targets that was unacceptable. **[Changed to bottoms up process in final bill]**
- Meaningless CEQA Relief. The CEQA provisions were unlikely to result in meaningful relief of any kind. **[Addressed in final bill]**
- Conflict With RHNA. The new goal of encouraging infill through transportation investments and the RTP (4 year cycle) directly conflicted with existing RHNA goals and was on a different cycle than RHNA (5-year cycle). **[Addressed in final bill]**
- Mandates Without Incentives. The bill was mandate oriented, not incentive based. **[Addressed in final bill]**
- Lack of Funding. The League was concerned about a continued lack of funding tools for infill infrastructure. **[Addressed by author]**

Fall 2007—Board Meets With Sen. Steinberg; CBIA Urges Action

Senator Steinberg traveled to San Jose to discuss SB 375 with the Board at its November 2007 meeting. At that time the Board renewed its commitment to negotiate with him to address the League's local control concerns. Board members appreciated this very clear signal of his desire to work with us in good faith to seek compromise on his legislation. We were invited a short time later to meet with the leadership of the CBIA, and we agreed on the importance of our mutual involvement in making SB 375 a workable, incentive-based bill for addressing GHG emissions from cars and light trucks. We also agreed that our failure to do so would increase the risk of serious and uninformed regulation of local land use and transportation programs by the CARB as it worked to implement AB 32, particularly in light of the U.S. Supreme Court decision mentioned earlier.

From that point forward, and with the help and advice of many members of the League board, League policy committee members, local planners, community development directors, city managers and attorneys, the League began to develop a set of recommendations to improve the bill. We formed a special city attorney's task force to evaluate the proposed CEQA incentives and convened other groups to assess other possible amendments. Throughout the process we kept the executive committee, board and relevant policy committees updated on the amendments that were being discussed.

Summer 2008—A Proposed Compromise Addresses Our Concerns

After literally thousands of staff hours studying and negotiating this bill, the exchange of extensive proposed amendments and careful negotiations with the author's direct involvement along with other stakeholders (builders, affordable housing groups, counties, COGs, planners, etc.), the bill in its amended form is significantly different:

- Mandatory Growth Allocations Eliminated. The mandatory growth allocations have been removed and the requirement in earlier drafts that a region "identify resource lands" has been changed to "gather and consider the best practically available scientific information about resource lands."

- Proposed New Definitions Abandoned. The ambiguous environmental land definitions have been clarified to be consistent with existing standards in current law that are well understood.
- Local Involvement in Setting GHG Targets. The bill now contains a fair process for setting regional targets that includes a statewide advisory committee with League representation. Minimum workshops requirements in each region are imposed on CARB.
- Local Land Use Jurisdiction Clearly Protected. Cities retain complete planning and regulatory authority over local land use decisions. There is no requirement to amend the local general plan to comply with the regional strategy, nor is it a precondition for CEQA relief.
- Special Outreach to Local Elected Officials by MPO. Each MPO must adopt an outreach process that includes workshops for local elected officials in each county.
- RHNA Extension and Consistency. The bill achieves a three-year extension of the RHNA process (from 5 – 8 years), making it consistent with the RTP process of two four-year cycles. This achieves a major League goal.
- Meaningful CEQA Relief. The bill contains numerous, meaningful CEQA relief provisions. Among other things, this includes relief from GHG analysis under CEQA for residential and mixed-use projects consistent with the density, designation and building intensity in the regional plan without any local plan changes necessary.
- Accounting for GHG Emissions. The bill contains a feasible way to account for GHG emissions from cars and light trucks
- Incentive Based System. The bill now offers meaningful CEQA relief incentives to reward development consistent with the regional Sustainable Communities Strategy (SCS) rather than local mandates. Local general plans must be considered as well in the development of the SCS.
- Ends Confusion Between RTP and Supplement. The bill explicitly removes any connection between the “Supplement” (now called the “Alternative Planning Strategy” which is required when a region’s RTP cannot meet the regional targets) and the RTP; i.e., the land use pattern in the Alternative Planning Strategy will not affect or be part of the RTP or its funding.
- Funding for Infill Infrastructure. Senator Steinberg agreed to make written commitments to work with League to secure additional funding for infill infrastructure funding while he is Pro Tem of the Senate.

CLOSING

As a result of these changes, a special task force consisting of the League’s Executive Committee and the chairs of the HCED, EQ and TCPW policy committees recommended that the League board support the bill in its special August 6 meeting. At that meeting the board voted unanimously (with one abstention) to support SB 375, as amended. The bill has now been approved by both the Senate and Assembly and is awaiting transmittal to the Governor. The League has advised the Governor of its support of the legislation. Please let us know if you have any questions. We hope to see you soon at the Annual Conference in Long Beach.

SUMMARY OF THE DEAL POINTS OF SB 375

I. OUTLINE: THREE SECTIONS OF SB 375

SB 375 is long and complex. It deals with multiple issues. But this complexity is necessary to the extent that it is seeking to align three separate regional planning processes. To offset some of this complexity, it's helpful to think about the bill in the following three "buckets:"

1. GHG Planning Process
2. CEQA Benefits
3. RHNA Alignment

The memo summarizes the bill within each of these buckets. It also adds an "Odds-n-Ends" section to cover a couple of additional points. Finally, this description does not summarize every clause or amendment. It merely reviews the main deal points.

II. GHG PLANNING WITHIN REGIONAL TRANSPORTATION PROCESS

- ***Scope.*** The bill applies to the state's 17 metropolitan planning organizations (MPOs).
- ***Target Committee to Advise CARB.*** A Regional Targets Advisory Committee will recommend protocols for setting GHG reduction targets for the regions. The League, CSAC and "planning organizations" are included in the committee's membership.
- ***Plan to Achieve the Target.*** Planning for GHG reductions occurs in one of two ways depending on whether the land use baseline used in the regional transportation plan (called the "Sustainable Communities Strategy" or "SCS") will achieve the target. If yes, then no further planning is necessary. If no, the region submits a separate "Alternative Planning Strategy" (APS) that shows how the target could be achieved.
- ***Specific Outreach to Local Elected Officials.*** The MPO must hold at least two workshops for local officials, or just one workshop if attended by a majority of agencies representing a majority of the population of the region. These workshops are specifically for the local elected to comment and share concerns.
- ***Stakeholder and Public Participation.*** There are three key opportunities for input. First, the process for setting a specific regional target includes a workshop within the region and an extended period of information exchange between the California Air Resources Board (CARB) and the region. Second, before the development of a draft SCS/APS, the MPO must hold three workshops within each county. And third, once completed, the draft SCS/APS must be circulated for at least 90 days and the MPO must hold three public hearings in different parts of each county.

- ***Certification of Plan by CARB.*** The region submits the SCS or APS to CARB for certification. The board may certify that the plan is sufficient to meet the target or reject it. If rejected, the board must provide its reasoning. No conditional approvals.
- ***No Mandatory Allocations.*** The planning priority provisions in 65080(b)(2)(F)), which have been criticized as creating “concentric circles,” have been eliminated. The regions need only “gather and consider” information about important resources and farmlands, but there is no requirement to act.
- ***RHNA Consistency; General Plan Consideration.*** In addition to projecting growth patterns for the next 20 years (current law), the SCS/APS must account for the RHNA allocation. It also must consider all current general plans.
- ***Environmental Resources.*** The definitions of resource areas and farmlands have been narrowed. The description of habitat areas is eliminated and replaced by the phrase “biological resources” as defined in Appendix G of the CEQA Guidelines. These resources need only be gathered and considered as part of the RTP process.

III. CEQA BENEFITS for CONSISTENCY with GHG TARGET

- ***New Exemption from Analyzing GHG Emissions from Cars and Light Trucks.*** A residential or mixed use residential project that is consistent with a CARB-certified SCS/APS need not analyze GHG emissions caused by cars and light trucks. A “mixed use residential project” is 50% residential in infill areas, and 75% elsewhere.
- ***Growth Inducing and Cumulative Impacts Related to Traffic.*** Residential and mixed use residential projects (as defined above) that are consistent with the SCS/APS need not address growth inducing or cumulative impacts from cars and light trucks generated by the project or regional transportation network.
- ***Reduced Density Alternative Need Not Be Analyzed.*** Environmental documents are not required to analyze reduced density as an alternative to address the effects of cars and light duty trucks generated by the project on global warming or the regional transportation network or to address growth inducing impacts.
- ***Regional Transportation Network Defined.*** Includes all existing and proposed transportation improvements in the transportation and air quality conformity modeling within the RTP. However, projects must still comply with any conditions, exactions, or fees for the mitigation of the project’s impacts on the regional transportation network or local streets and roads.
- **** Transit Priority Projects.*** Transit Priority Projects are defined to be projects that are consistent with the SCS/APS, are at least 50 percent residential, have a density of at least 20 units per net acre, and are within a half mile of a transit corridor that has a

minimum 15 minute service at peak times. These projects are entitled to either a CEQA exemption or streamlined analysis as provided below: (Earlier versions required the local agency to bring its entire general plan into conformance before this relief could be sought, that requirement has been struck.)

- ** **CEQA Exemption.*** Projects that meet this standard, are smaller than 8 acres and 200 units, and meet a number of other environmental thresholds (e.g., no habitat, wetlands, comply with green building standards to name a few) and at least 20 percent of the units are affordable to moderate income purchasers or set aside open space at a ratio of 5 acres per 1000 people are exempt from CEQA.
- ** **SCS/APS Environmental Assessment.*** Projects that are not exempt nevertheless qualify for a streamlined CEQA process when the following three conditions are met: (1) consistent with the SCS/APS; (2) where an EIR on the regional transportation network has been completed; and (3) the project incorporates all mitigation measures from all applicable environmental documents. The abbreviated process, among other things, allows the initial study to focus on project specific impacts, exempts any analysis of cumulative or growth inducing impacts consistent with the SCS/APS, and allows a shorter comment period.
- ** **Traffic Mitigation Streamlining.*** Local agencies can adopt a set of traffic mitigation measures for projects that are at least 10 units per acres and 75% residential. Once adopted, the project need not comply with any other traffic mitigation measures. The agency must update the mitigation measures every five years.

** These provisions are in a separate mock up document. They are similar to the provisions that are already in print. The main change is that they apply when a specific project is consistent with the SCS/APS, instead of the entire general plan.*

IV RHNA ALIGNMENT

- ***SCS/APS Consistency.*** RHNA Allocation must be consistent with SCS/APS (though every community will get at least some allocation to further the fair share principle).
- ***8 Year Timing and Plan Alignment.*** RHNA planning period extended from 5 to 8 years. The Council of Governments (COG) distributes RHNA at beginning of planning period, which is same time that development pattern for RTP and SCS/APS is established. Thus, three planning processes are aligned.
- ***Self Certification.*** The current process that allows a local agency to certify that their housing element is still recognized in the law.
- ***Failure to Submit a Housing Element Penalty.*** Local agencies that fail to submit a valid housing element or do not self certify are subject to a four year review cycle.

- ***Zoning Deadlines.*** Housing element due to HCD one year into the planning period. All zoning must be complete within 3 years later, beginning when the local agency has received final comments from HCD.
- ***One Year Extension to Zone.*** A one year extension is available to local agencies upon making one of the following three findings and completing 75% of the zoning in their program: (1) laws, actions, or omissions of other governmental entities prevent local agency from adopting zoning; (2); infrastructure constraints or deficiencies prevent the establishment of zoning standards; (3) accommodating the allocation requires significant amendments to the general plan.
- ***No HCD Review of Zoning Timelines.*** No HCD review of this finding, but local government must send to HCD a schedule of proposed actions that will be undertaken within the extended period to meet the zoning target.
- ***Penalty for Missing Zoning Timelines.*** Failure to meet zoning timeline allows potential court sanctions that can be imposed by court. The court must make finding and consider potential sanctions within 60 days of filing. But before making decision, court must consider all equitable factors that have led to the delay.
- ***New Anti-NIMBY Provision.*** This provision applies only to projects that are more than 49% affordable (in effect, 100% affordable) where the housing element indicates a site is suitable for residential development but that zoning has not yet been completed. In such cases, local agencies can only deny the project for previously quantified health and safety reasons (a very hard standard to meet).
- ***Timelines for Programs.*** Local agencies must put a timeline on their programs and report out on a bi-annual basis on the progress that is being made.

V. ODDS-n-ENDS

- ***Funding of Infill Infrastructure.*** We have argued that if state policy is going to encourage compact development, we have to revisit how we fund infill infrastructure. Development fees and assessments are not enough. Although SB 375 does not address this issue directly, the Senator has agreed to work with this League on this issue during his term as pro tem and will send the League a letter to that effect.
- ***Funding for Planning.*** Similarly, the bill does not include any funding for planning. We are told that the Senator will address some of these issues in SB 732, which would appropriate Prop 84 funding related to sustainable planning. Although the funding itself would be positive, the League continues to monitor this bill to assure that it meets with the League's principles on the infrastructure funding adopted by the Board in 2007.